

ARKANSAS SUPREME COURT

No. CR 06-598

NOT DESIGNATED FOR
PUBLICATION

BILLY JOE HENSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 9, 2006

PRO SE APPEAL FROM THE CIRCUIT
COURT OF PULASKI COUNTY, CR
2003-4397, HON. TIMOTHY DAVIS
FOX, JUDGE

AFFIRMED.

PER CURIAM

The Arkansas Court of Appeals affirmed a judgment that found appellant Billy Joe Henson guilty of theft by receiving and sentenced him to twenty years' imprisonment as a habitual offender. *Henson v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Feb. 8, 2006). The mandate issued on February 28, 2006. On March 7, 2006, appellant timely filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1. By order entered March 22, 2006, the trial court dismissed that petition for failure to comply with Rule 37.1.¹

Appellant filed a notice of appeal of that order on March 29, 2006. On April 14, 2006, appellant filed in the trial court a "motion for rehearing" and a new postconviction relief petition

¹ The trial court's order appears to reference the previous version of the rule, and through what is clearly a clerical error, in fact, references a rule of civil procedure. The current version of the rule, however, took effect March 1, 2006, a few days prior to the date the petition was filed, and is, therefore, the applicable rule. Under either the previous version or the current version of that rule, the requirements herein discussed are the same.

under Rule 37.1. No order addressing the motion or the new petition appear in the record. We note that, at the time the motion and second petition were filed, appellant had already filed notice of appeal. Now before us is appellant's appeal of the March 22, 2006, order dismissing his petition under Rule 37.1.

Appellant raises two points on appeal. He contends first that the trial court erred in dismissing his petition, and, second, that the trial court erred in not permitting him to resubmit his petition. Appellant argues that he was hampered in his preparation of his petition in that he did not have sufficient time to review all issues and in that he was not represented by counsel and should not be held to the same standards as an attorney. He cites to the federal rules of civil procedure, and asserts that his filing of the petition was compliance with our own rules of procedure, that he is actually innocent, and that failure to consider the claims in his petition would be a miscarriage of justice. In support of his second point, appellant references his motion, and argues that he still had time in which to file a compliant petition and that the trial court failed to make adequate findings of fact in its order and should have provided him with a hearing. He contends that to deprive him of a postconviction remedy is fundamentally unfair.

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002). If the trial court finds the petition, files and records of a case conclusively show that the petitioner is not entitled to relief, Ark. R. Crim. P. 37.3(a) requires the court to make written findings

specifying the parts of the record relied upon to sustain those findings. Here, the trial court found the petition was not compliant with Ark. R. Crim. P. 37.1.

The trial court sufficiently referenced the petition as that part of the record relied upon. Despite appellant's assertion to the contrary, his petition clearly did not comply with our Rule 37.1, in that it exceeded the limitations set for lines per page, words per line, and margins. Rule 37.1(b) permits either the circuit court or the appellate court to dismiss any petition that fails to comply with those requirements. The trial court's findings on this point were not clearly erroneous.

As to appellant's contention that our procedural rule is fundamentally unfair and violates due process, this court has consistently held that due process does not require courts to provide an unlimited opportunity to present postconviction claims or prevent a court from setting restrictions upon the presentation of that claim. *See Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003); *Rowbottom v. State*, 341 Ark. 33, 13 S.W.3d 904 (2000); *Washington v. State*, 308 Ark. 322, 823 S.W.2d 900 (1992) (*per curiam*). The restrictions in Rule 37.1 placed upon lines per page, words per line and margins require little more than an ability to count and measure with a ruler. Those restrictions are neither burdensome, unduly time-consuming, nor unreasonable.

Appellant's argument that he was unable to comply with our procedure because he was not represented by counsel also fails. All litigants, including those who proceed *pro se*, must bear responsibility for conforming to the rules of procedure or demonstrating a good cause for not doing so. *Peterson v. State*, 289 Ark. 452, 711 S.W.2d 830 (1986) (*per curiam*); *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (*per curiam*). *See also Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (*per curiam*). Appellant has not stated good cause for his failure to comply.

Nor does appellant's claim of actual innocence provide an exception to our rules of procedure. The cases cited by appellant on this issue do not appear to have any relevance or any application to his argument, and certainly do not support his argument. A claim of actual innocence is in essence a challenge to the sufficiency of the evidence, and, as a direct attack on the verdict, is not cognizable in postconviction relief proceedings. We do not permit an appellant to rechallenge the sufficiency of the evidence at trial in a postconviction proceeding. *Johnson v. State*, 321 Ark. 117, 900 S.W.2d 940 (1995).

Appellant's last point is that the trial court erred in not permitting him to submit another petition to cure the deficiencies. Rule 37.1(b) does not require that a non-compliant petition be dismissed by the circuit court without prejudice. Subsection (b), in fact, specifically allows this court to dismiss on appeal where a petition failed to comply with that subsection, a situation in which it is clear no opportunity to cure is contemplated. There was no error in the order entered.

The trial court could not have appropriately considered appellant's motion for rehearing or the second tendered petition. The trial court was not permitted under Ark. R. Crim. P. 37.2(d) to consider a petition for rehearing. The second petition was non-compliant with Rule 37.1, as the State correctly notes, in that it exceeded the ten-page limitation and did not include the required affidavit verifying the petition.

We hold that the trial court's findings were not clearly erroneous and find no reversible error. Accordingly, we affirm the order dismissing the petition.

Affirmed

Glaze, J., not participating.